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upon interstate commerce.¹⁹ These laws cannot be sustained on the ground that they are inspection, quarantine or licensing laws,²⁰ as they set up an arbitrary standard to be fixed by individuals who may prohibit the sale, for a considerable time at least, of securities which they believe may result in loss to the purchaser. As such, they cast restraint on the exchange of commodities which are subjects of a commerce, national in its character, and the right to impose such restraint lies exclusively within the federal power.²¹

The California Investment Companies Act exempts from the commissioner's control all corporations, associations, co-partnerships and companies subject to federal control. Most of the companies selling "Blue-Sky" investments are organized under the laws of foreign jurisdictions or can easily be so organized. If such companies or their agents in the interstate sale of their securities are to be held to be engaged in interstate commerce and thus subject to federal control, the California act in exempting them fails to reach the evil which exists. Assuming this to be true, a possible method of control is suggested. An act might be passed by congress similar in principle to the Webb-Kenyon Act, which would give the state power to prohibit the introduction of securities unless introduced in compliance with the state law. However, this would not eliminate the due process objection.

C. R. S.

CONSTITUTIONAL LAW: RIGHT OF A STATE TO IMPOSE A LICENSE TAX UPON FOREIGN CORPORATIONS: BURDEN UPON INTERSTATE COMMERCE.—In the case of *Albert Pick & Company v. Jordan*,¹ the California Supreme Court has upheld as constitutional the corporation license tax of 1905² with amendments thereto, and the corporation license fee prescribed by the political code.³ A former note in the California Law Review⁴ had occasion to consider these statutes and intimated that the former, which imposed a maximum amount of two hundred and fifty dollars, was constitutional but that the latter, with unlimited graduation, was not. Our Supreme Court in upholding both taxes has expressly reversed a former decision of its own upon this question.⁵ The

¹⁹ Robbins v. Shelby Taxing District, supra, note 18.

²⁰ Standard Stock Food Co. v. Wright (1912), 225 U. S. 540, 56 L. Ed. 1197, 32 Sup. Ct. Rep. 784; Alabama & New Orleans Transportation Co. v. Doyle, supra, note 12.

²¹ Bowman v. Chicago & N. W. Ry. Co., supra, note 7.

¹ (Dec. 15, 1914), 48 Cal. Dec. 559, 145 Pac. 506. Also the case of Melville Clark Piano Co. v. Jordan (Dec. 15, 1914), 48 Cal. Dec. 577, 145 Pac. 516.

² 1905 Stats. Cal. 493, and amendments thereto.

³ Cal. Pol. Code, § 409, subd. 4, formerly § 416, subd. 4.

⁴ 2 Cal. Law Rev. 321.

⁵ Mulford Co. v. Curry (1912), 163 Cal. 276, 125 Pac. 236.

decisions of the United States Supreme Court⁶ are reviewed and although the court declares its inability to reconcile them, and is not alone in this respect,⁷ there are other courts which find no difficulty in so doing.⁸

The question presented in these cases is the constitutionality of a license tax based upon the whole or authorized amount of capital stock of a foreign corporation engaged in interstate as well as intrastate commerce. The United States Supreme Court held the statutes in the earlier cases⁹ unconstitutional as being "for every practical purpose" a property tax upon the corporation's interstate as well as local business. This rendered it repugnant to the commerce clause as well as to the due process clause. In the latest case¹⁰ before that court, which has led the California court to reverse its former decision, the license was considered "strictly an excise tax and not a tax upon property". The court refused to lay down any test as to when a tax would amount to an excise, occupation, or mere privilege tax. Each case "must be decided upon its own facts". Great weight was given by the court to the history and system of taxation laws in Massachusetts as well as to the particular statute itself.

The California license fee¹¹ resembles the fee imposed by the Kansas statute, there being no maximum limit imposed and the percentages of tax in the graduated scale being about half those of Kansas. The Montana statute seems to be even more drastic with regard to the fees imposed than the Kansas statute. Our license tax,¹² on the other hand, which has since been repealed,¹³ was like the Massachusetts statute and even more moderate, the maximum sum being two hundred and fifty dollars. The Idaho statute is still less offensive, imposing a maximum fee of only one hundred and fifty dollars as against two thousand dollars by Massachusetts.

Where the exaction is for the privilege of doing interstate business and for the enjoyment and protection of the laws, it is

⁶ *Western Union Tel. Co. v. Kansas* (1910), 216 U. S. 1, 54 L. Ed. 355, 30 Sup. Ct. Rep. 190; *Pullman Co. v. Kansas* (1910), 216 U. S. 56, 54 L. Ed. 378, 30 Sup. Ct. Rep. 232; *Ludwig v. Western Union Tel. Co.* (1910), 216 U. S. 146, 54 L. Ed. 423, 30 Sup. Ct. Rep. 280; *Atchinson Topeka & Santa Fe Ry. Co. v. O'Connor* (1912), 223 U. S. 280, 56 L. Ed. 436, 32 Sup. Ct. Rep. 216; *Baltic Mining Co. v. Massachusetts* (1913), 231 U. S. 68, 34 Sup. Ct. Rep. 15.

⁷ *State v. Alderson* (Mont., 1914), 140 Pac. 82.

⁸ *Northern Pac. Ry. Co. v. Gifford* (1913), 25 Idaho 196, 136 Pac. 1131.

⁹ See cases cited in note 6, *supra*.

¹⁰ *Baltic Mining Co. v. Massachusetts* (1913), 231 U. S. 68, 34 Sup. Ct. Rep. 15.

¹¹ Cal. Pol. Code, § 409, subd. 4.

¹² Corporation Tax Act, 1905 Stats. Cal. 493.

¹³ 1913 Stats. Cal. 680.

an excise tax. But where it is upon the business itself, or what is the same, aimed at the capacity and ability to do business, it is a property tax. Any graduated tax would therefore seem to be such a tax for it aims at ability and capacity, proceeding upon the principle that the abler can afford to pay more. But this would not condemn all the taxes under consideration as unconstitutional, for the Supreme Court has declared the principle that it will look through form to substance to see what the real effect is.¹⁴ Where it is an excise tax or occupation tax in form only, and its "necessary effect is to burden interstate commerce or tax property beyond the jurisdiction of the state," it is invalid. So if a tax is in form a property tax, but in substance or effect a mere excise or occupation tax, it should be upheld. The principle that where one of two interpretations can be placed upon a statute, the one in favor of its constitutionality, the other against it, the former shall be taken,¹⁵ fortifies this position.

V. M. A.

CONSTITUTIONAL LAW: MASTER AND SERVANT: HOURS OF LABOR FOR WOMEN.—Once more the attack on the constitutionality of a law regulating the hours of labor for women has proved futile. In the face of strenuous objection on the ground that such a law denies to employer and employee liberty of contract as well as the equal protection of the laws, the Supreme Court of the United States, in the cases of *Miller v. Wilson*¹ and *Bosley v. McLaughlin*², has sustained the California Women's Eight Hour Law.³ Prior to 1908 there was much argument and considerable authority⁴ against the constitutionality of such an act but in that year the validity of a ten hour law for women was established,⁵ and the reduction of the time limit by two hours in the principal cases seems to have been accomplished without difficulty. It is noteworthy that the court, in sustaining the discrim-

¹⁴ *Galveston H. & S. A. Ry. Co. v. Texas* (1908), 210 U. S. 217, 52 L. Ed. 1031, 28 Sup. Ct. Rep. 638.

¹⁵ *Grenada County Supervisors v. Brogden* (1884), 112 U. S. 261, 28 L. Ed. 704, 5 Sup. Ct. Rep. 125.

¹ (Feb. 23, 1915), 236 U. S. 373, 35 Sup. Ct. Rep. 342.

² (Feb. 23, 1915), 236 U. S. 385, 35 Sup. Ct. Rep. 345.

³ 1911 Stats. Cal. 437, amended to include several other classes of occupations, 1913 Stats. Cal. 713.

⁴ *Ritchie v. People* (1895), 155 Ill. 98, 40 N. E. 454, 46 Am. St. Rep. 315; *Burcher v. Colorado* (1907), 41 Colo. 495, 93 Pac. 14, 124 Am. St. Rep. 143, which apparently has not been overruled; *People v. Williams* (1907), 189 N. Y. 131, 81 N. E. 778, 12 L. R. A. (N. S.) 1130.

⁵ *Muller v. Oregon* (1908), 208 U. S. 412, 52 L. Ed. 551, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957; followed in *Ohio*, *Hawley v. Walker* (1914), 232 U. S. 718, 34 Sup. Ct. Rep. 479; *Ritchie Co. v. Wayman* (1910), 244 Ill. 509, 91 N. E. 695, virtually reversing *Ritchie v. People*, supra note 4; *Commonwealth v. Riley* (1912), 210 Mass. 387, 97 N. E. 367; Ann. Cas.